



June 26, 2001

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
Attorneys at Law
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2001-2734

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148772.

The Comal Independent School District (the “district”), which you represent, received a request for records concerning an investigation the district conducted regarding one of its employees. You state that you have released some of the requested information to the requestor. You claim, however, that the submitted information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the requestor’s comments submitted to this office by the district.¹ See Gov’t Code § 552.304.

First, you contend that Exhibits AG-001 and AG-002 are medical records subject to section 159.002 of the Occupations Code, known as the Medical Practice Act (the “MPA”). The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

¹We note that our records do not indicate receipt of the requestor’s comments. However, we received the requestor’s comments as an attachment to the district’s response thereto.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). You indicate that the documents containing medical information were created by a physician for the purpose of evaluating a district employee's medical condition. Therefore, we find that the medical information at issue is subject to the MPA and may be released only in accordance with the MPA.

With respect to the remaining submitted information, we note that the request for information submitted to the district is not from a member of the public but from another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act") as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the district has the discretion to release the remaining submitted information to the State Board for Educator Certification. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exceptions to the remaining submitted information.

You argue that "the identities and the written statements of the student and employee witnesses" in Exhibits AG-003 through AG-017 are protected under section 552.101 and common law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an

investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

You inform us that allegations were made that the named employee "may have engaged in conduct that was inappropriate and could possibly constitute sexual harassment." You explain that the submitted information contains statements pertaining to allegations of sexual harassment. You state that a summary of the district's investigation regarding allegations that the named employee was allegedly under the influence of a controlled substance has been released to the requestor. However, you provide no indication that there is a summary of the district's investigation regarding the allegations of sexual harassment. Because there is no adequate summary of these allegations, the district must release the documents in Exhibits AG-003 through AG-017. However, based on *Ellen*, the district must withhold the identities of the witnesses and victims. We have marked the information that must be withheld. We are unable to find any other information in the submitted documents that is excepted from disclosure under section 552.101 and common law privacy.

You also contend that the identities of the employees that provided statements to the district are excepted from disclosure under section 552.131(b) of the Government Code. We address this claimed exception with respect to the employee names that are not protected under section 552.101. Section 552.131 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). After reviewing the submitted statements, it appears that the remaining individuals whose identities you seek to withhold did not actually report an alleged violation of law to the district. Therefore, the remaining employee names in Exhibits AG-003 through AG-017 are not protected by section 552.131.

To summarize, we conclude that: (1) Exhibits AG-001 and AG-002 may be released only in accordance with the MPA; (2) the district has the discretion to release the remaining submitted information to the State Board for Educator Certification; and (3) if the district declines to exercise that discretion, the district must withhold the information we have marked in Exhibits AG-003 through AG-017 under section 552.101 and common law privacy. The remaining information in Exhibits AG-003 through AG-017 must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148772

Enc: Marked documents

c: Mr. Scott Byram, Staff Investigator
Professional Discipline Unit
State Board for Educator Certification
1001 Trinity
Austin, Texas 78701-2603
(w/o enclosures)